



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute an Agreement for Consulting Services with Matt Foskett Consulting, LLC for Electric Utility Rates and Resources Services (\$120,000)

MEETING DATE: June 6, 2012

PREPARED BY: Electric Utility Director

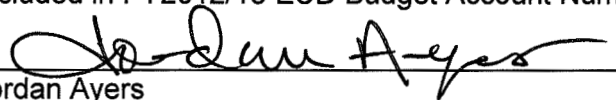
RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute an agreement for consulting services with Matt Foskett Consulting, LLC for electric utility rates and resources services in an amount not to exceed \$120,000.

BACKGROUND INFORMATION: The Electric Utility Department requires consulting services for planning, evaluation, acquisition and operation of bulk power supplies and delivery resources as well as the development of electric utility rates.

The attached agreement for consulting services with Matt Foskett Consulting, LLC will provide these services as outlined in the scope of work shown on Attachment A. Mr. Foskett has over 30 years of experience in the electric utility industry.

FISCAL IMPACT: No additional funding is required.


FUNDING: Included in FY2012/13 EUD Budget Account Number 160603.


Jordan Ayers
Deputy City Manager/Internal Services Director


Elizabeth A. Kirkley
Electric Utility Director

EAK/lst

APPROVED:


Konradt Bartlam, City Manager

AGREEMENT FOR CONSULTING SERVICES

This Agreement is made and entered into as of June 6, 2012, by and between the City of Lodi, a municipal corporation (hereinafter "City") and Matt Foskett Consulting LLC (hereinafter "Consultant"), (collectively "Parties") both of whom agree as follows:

RECITALS:

It is the desire of the City to retain the services of Consultant for a period of one (1) year, commencing on July 1, 2012 through June 30, 2013, to provide rates and resources services, as more fully described below, to the Director of the City's Electric Utility Department.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES:

City hereby agrees to contract with Consultant to perform tasks for the City of Lodi at the direction of the Electric Utility Department Director associated with the planning, evaluation, acquisition and operation of bulk power supplies and delivery resources as well as the development of electric rate schedules. The scope of services to be performed by Consultant is more fully set forth in Exhibit A, attached hereto and incorporated by this reference.

2. TIME FOR COMMENCEMENT AND COMPLETION OF WORK:

Consultant shall commence work pursuant to this Agreement, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the scope of services (Exhibit A).

Consultant shall submit to City such reports, diagrams, drawings and other work products as may be designated in the scope of services (Exhibit A).

Consultant shall not be responsible for delays caused by the failure of City staff to provide required data or review documents within the appropriate time frames.

3. COMPENSATION:

Consultant's compensation for all work under this Agreement shall conform to the provisions of the Fee Schedule, attached hereto as Exhibit B and incorporated by this reference.

Consultant shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by City.

3.1. METHOD OF PAYMENT:

Consultant shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours,

individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. Consultant's compensation for all work under this Agreement shall not exceed the amount of the Fee Schedule (Exhibit B).

3.2. COSTS:

The Fee Schedule (Exhibit B) shall include all reimbursable costs required for the performance of the scope of services (Exhibit A). Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by City.

3.3. AUDITING:

City reserves the right to periodically audit all charges made by Consultant to City for services under this Agreement. Upon request, Consultant agrees to furnish City, or a designated representative, with necessary information and assistance needed to conduct such an audit.

Consultant agrees that City or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. Consultant agrees to provide City or its delegate with any relevant information requested and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Consultant further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

4. BENEFITS:

As an independent contractor, Consultant shall not be entitled to any benefits from City, including but not limited to PERS retirement, sick leave, vacation, administrative leave, health insurance, deferred compensation, or life insurance.

5. CONSULTANT IS NOT AN EMPLOYEE OF CITY:

Consultant agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of City and not an employee of City. City shall not direct the work and means for accomplishment of the services and work to be performed hereunder. City, however, retains the right to require that work performed by Consultant meet specific standards without regard to the manner and means of accomplishment thereof.

6. INSURANCE REQUIREMENTS FOR CONSULTANT:

Consultant shall take out and maintain during the term of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

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7. TERMINATION:

(a) Termination by Consultant - In the event Consultant terminates this Agreement, he shall give City at least twenty-one (21) days advance written notice and shall be entitled to all earned compensation.

(b) Termination by City – The City Manager may terminate this Agreement at any time, with or without cause. Twenty-four (24) hours Notice of Termination shall be provided to Consultant in writing.

Upon termination, Consultant shall immediately suspend all work on behalf of City and deliver any documents or work in progress to City. However, City shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by Consultant with third parties in reliance upon this Agreement.

8. CONFIDENTIALITY:

Consultant agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by City. City agrees to maintain confidentiality of any documents owned by Consultant and clearly marked by Consultant as “Confidential” or “Proprietary”, except to the extent otherwise required by law or permitted in writing by Consultant. Consultant acknowledges that City is subject to the California Public Records Act.

9. CITY BUSINESS LICENSE REQUIREMENT:

Consultant acknowledges that Lodi Municipal Code Section 3.01.020 requires Consultant to have a city business license and Consultant agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

10. NOTICES:

All notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, as follows:

To City:

Konradt Bartlam, City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

To Consultant:

Matt Foskett Consulting LLC
Attn: Matt Foskett
2464 Portola Way
Sacramento, CA 95818

11. MODIFICATIONS:

No modification of this Agreement shall be valid unless said modification is in writing and signed by both parties.

12. APPLICABLE LAW, JURISDICTION, SEVERABILITY, AND ATTORNEY'S FEES:

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

13. CAPTIONS:

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

14. INTEGRATION AND MODIFICATION:

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

15. CONFLICT OF INTEREST:

Consultant shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to his City consultancy. Consultant is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (FPPC Form 700) at the time of appointment, annually thereafter, and at the time of termination of this Contract.

16. CITY ADMINISTRATIVE POLICIES AND PROCEDURES:

Because Consultant will at times be interacting with City employees and third parties in the course of providing services under this Agreement, Consultant agrees to review and comply with City's Drug-free Workplace Policy, Discrimination Policy and City's Discrimination Complaint Procedures, as set forth in the City of Lodi Administrative Policy and Procedure Manual.

17. INDEMNIFICATION AND RESPONSIBILITY FOR DAMAGE:

Consultant to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of Consultant, any subcontractor employed directly by Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

18. NO PERSONAL LIABILITY:

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

IN WITNESS WHEREOF, the City Manager of the City of Lodi has signed this Agreement and Consultant has signed and executed this Agreement as of the day and year first above written.

CITY OF LODI, a municipal corporation

CONSULTANT
MATT FOSKETT CONSULTING LLC

By: _____
Konradt Bartlam,
City Manager

By: 
Matt Fokett


Taxpayer ID No. 45-5196669

Attest:

Randi Johl
City Clerk

Approved as to Form:

D. Stephen Schwabauer
City Attorney

By: _____
Janice D. Magdich
Deputy City Attorney 

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Fee Schedule
- Exhibit C: Insurance Requirements

Funding Source: 160603.7323
(Business Unit & Account No.)

Exhibit A

Matt Foskett Consulting LLC will provide assistance to the Client in the areas of rates, cost of service, power supply and transmission costs. This work may include but is not limited to the following:

- 9 Cost of service
- 9 Rate Design and evaluation
- 9 Power cost adjustment rate
- 9 NCPA resource and bill review
- 9 Resource evaluation
- 9 Load Forecasting
- 9 CAISO and other transmission issue review
- 9 Compliance with State Green House Gas Program
- 9 Compliance with State Renewable Portfolio Standard
- 9 Compliance with CAISO Resource Adequacy requirement
- Fuel Procurement

Exhibit B

Matt Foskett Consulting LLC

FEE SCHEDULE CALENDER YEARS 2012 & 2013

HOURLY BILLING RATES:

- Principle Consultant \$85.00/hour

EXPENSES:

- Auto Mileage \$0.555/mile
IRS standard mileage rate

For vehicle travel outside San Joaquin, Sacramento and southern Placer Counties; no mileage charges will be incurred for trips inside San Joaquin, Sacramento or southern Placer Counties.

- 9 Air Travel At Cost
- Meals and Incidental Expenses (in San Joaquin, Sacramento and southern Placer Counties none, elsewhere at cost)
- Lodging (In San Joaquin, Sacramento and southern Placer Counties none, elsewhere at cost)
- Sub-consulting and Sub-contracting At Cost plus 10%
- 9 Other Reimbursable Expenses At Cost

NOTES:

For vehicle travel outside San Joaquin, Sacramento or southern Placer Counties one half the employees' hourly rate will be charged from home portal to destination portal using Google Maps travel time estimates.

Invoices will be sent at the beginning of the calendar month for services provided and expenses incurred the previous calendar month. Payment is expected within 30 days unless otherwise provided for in the contract.



Exhibit C

5-413 Insurance Reaquirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insuranceshall be as follows:

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|---|--|
| 1. <u>COMPREHENSIVE GENERAL LIABILITY</u> | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$1,000,000 Ea. Occurrence | \$1,000,000 Bodily Injury - Ea. Person |
| | \$1,000,000 Bodily Injury - Ea. Occurrence |
| \$2,000,000 Aggregate | \$1,000,000 Property Damage - Ea. Occurrence |
| 3. <u>ERRORS AND OMISSIONS LIABILITY</u> | |
| \$1,000,000 Ea. Occurrence | |

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) Additional Named Insured Endorsement
Such insurance as is afforded by **this** policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, **Officers, Agents**, Employees, and Volunteers **as** additional named insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) Notice of Cancellation or Chanae in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage **to** the Risk Manager, City of Lodi, 221 **W.** Pine St., Lodi, CA **95240**.

5-414 Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, **221 W. Pine St., Lodi, CA 95240**.

RESOLUTION NO. 2012-80

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR
CONSULTING SERVICES WITH MATT FOSKETT
CONSULTING, LLC FOR ELECTRIC UTILITY RATES AND
RESOURCES SERVICES

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WHEREAS, the Electric Utility Department requires consulting services for planning, evaluation, acquisition, and operation of bulk power supplies and delivery resources as well as the development of electric utility rates; and

WHEREAS, the agreement for consulting services with Matt Foskett Consulting, LLC will provide these services as outlined in the scope of work; and

WHEREAS, Mr. Foskett has over 30 years of experience in the electric utility industry; and

WHEREAS, funds are available in the FY 2012/13 EUD Budget Account Number 160603.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute an agreement for consulting services with Matt Foskett, LLC for electric utility rates and resources services with administration by the Electric Utility Director in an amount not to exceed \$120,000.

Dated: June 6, 2012

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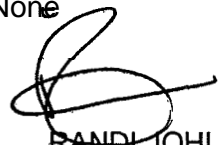
I hereby certify that Resolution No. 2012-80 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi, and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk